

 ORIGINAL

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

USDC SDNY DOCUMENT ELECTRONICALLY FILED DOC #: DATE FILED: 6/25/20
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ING BANK N.V.,

Plaintiff,

-against-

M/V TEMARA, IMO No. 9333929, her engines,  
tackle, equipment, furniture, appurtenances, etc., in  
rem,

Defendant.

No. 16 Civ. 95 (LLS)

**STIPULATION AND ~~PROPOSED~~ ORDER FOR  
DISMISSAL WITH PREJUDICE**

LLS

COME NOW Plaintiff ING Bank N.V. as Security Agent under that certain USD 700,000,000 Multicurrency Revolving Borrowing Base Facilities Agreement, dated as of December 19, 2013 and the related English Omnibus Security Agreement, dated as of December 19, 2013, each between ING Bank and Defendant O.W. Bunker & Trading A/S and certain of its affiliates ("ING") and Cimpship Transportes Maritimos, S.A. (the "Vessel Interest"), individually and on behalf of Defendant M/V TEMARA (IMO No. 9333929), (the "Vessel") (collectively, the "Parties"), filing their Stipulation and Proposed Order for Dismissal With Prejudice, and would respectfully show as follows:

WHEREAS, in October 2014, charterer Copenship Bulkers A/S contracted with O.W. Bunker & Trading A/S ("O.W. Denmark") for the sale and delivery of marine fuel bunkers to the Vessel in Panama (the "Fuel Delivery"), as more particularly described in the above-captioned Complaint (Doc. 1);

WHEREAS, O.W. Denmark contracted and/or arranged with O.W. Bunker USA Inc. (“O.W. USA”) to make or arrange the Fuel Delivery to the Vessel, and O.W. USA subcontracted with CEPSA Panama, S.A. in connection with the Fuel Delivery to the Vessel;

WHEREAS, on October 9, 2014, the fuel ordered by Copenship Bulkera A/S from O.W. Denmark was delivered to the Vessel;

WHEREAS, on May 22, 2015, ING filed the above-captioned Complaint (Dkt. 1) *in rem* against the Vessel in the U.S. District Court for the District of Maryland, which action was subsequently transferred to this Court;

WHEREAS this Court accepted jurisdiction over this action and there is currently on deposit in the Court’s registry the sum of \$266,209.26;

WHEREAS, also on May 22, 2015, CEPSA Panama, S.A. filed an intervenor complaint in the Action against the Vessel, ING, and O.W. Denmark (Doc. 18), and, on November 20, 2015, the Court held that CEPSA International B.V. (together with CEPSA Panama, S.A., “CEPSA”) was the real party in interest (Doc. 79);

WHEREAS, on August 25, 2016, the Court entered summary judgment dismissing CEPSA’s claims (Docs. 152, 153), which decision was subsequently affirmed by the U.S. Court of Appeals for the Second Circuit on June 13, 2018, *see ING Bank N.V. v. M/V Temara*, 892 F.3d 511 (2d Cir. 2018);

WHEREAS, by letter to the Court dated October 12, 2018, counsel for CEPSA confirmed that the claims asserted by CEPSA had been dismissed and that CEPSA “ha[d] no further substantive matters before this Court” (Doc. 208); and



WHEREAS ING and the Vessel Interest (on its own behalf and on behalf of the Vessel) have executed a confidential settlement agreement dated June 18, 2020 (the "Settlement Agreement"), concerning ING's claims related to and arising from the Fuel Delivery;

NOW, IT IS HEREBY

STIPULATED AND AGREED, by and between the Parties hereto, that, in accordance with the terms of the Settlement Agreement, the funds on deposit with the Court's registry in this action, plus any interest accrued under the Court's CRIS system, be disbursed to the Vessel's attorneys in this action, to then be disbursed by them in accordance with the Settlement Agreement; and it is further

STIPULATED AND AGREED, pursuant to Fed. R. Civ. P. 41(a), that the above-captioned action be and is hereby dismissed with prejudice, without attorneys' fees, costs, or expenses to any party; and it is further

STIPULATED AND AGREED, that this Stipulation may be filed without further notice and, for the purposes of filing this Stipulation, this Stipulation may be executed in counterparts, which, when taken together, shall constitute the entire Agreement, and that signatures by facsimile and electronic mail should be considered by the Court the same as original signatures.

Dated: New York, New York  
June 19, 2020

By: James H. Power / by permission  
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*Attorneys for Plaintiff ING Bank N.V.,  
as Security Agent*

**SO ORDERED:**

**The Warrant for Arrest *In Rem* for the M/V TEMARA dated May 22, 2015, to the extent still in force, is hereby vacated and this action is dismissed with prejudice.**

**The Clerk of Court shall forthwith distribute the funds on deposit in this action, plus any interest accrued under the Court's CRIS system, by check made payable to "Holland & Knight LLP as attorneys", to be disbursed by Holland & Knight LLP in accordance with the terms of the Settlement Agreement.**

Louis L. Stanton  
Hon. Louis L. Stanton  
UNITED STATES DISTRICT JUDGE

6/25/20  
Dated